

### **Remarks**

Receipt is acknowledged of the Office Action mailed January 9, 2004. Claims 39-64 were pending in the application. Claims 39-64 were subjected to a restriction requirement, and claims 39-51 were provisionally elected for examination with traverse. This restriction requirement was made final in the January 9, 2004 Office Action. Claims 52-64 have been cancelled without prejudice or disclaimer, and thus claims 39-51 are now pending for consideration at this time.

A one-month extension of time is being filled concurrently herewith.

### **Rejections Under 35 U.S.C. §102(e)**

Claims 39-50 stand rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 6,039,688 to Douglas et al. ("Douglas" hereafter). In particular, the Office Action asserts that Douglas discloses "user sophistication" as "the number of points that the user earns for participating in the system. The system thus determines the user sophistication by keeping a record of the points for each use." See first full paragraph on pg. 3, of the pending Office Action. Applicant respectfully traverses this assertion and the rejection of claims 39-50 for at least the following reasons.

Douglas discloses a therapeutic behavior modification program having a series of milestones for an individual to achieve lifestyle changes necessary to maintain his or her health or recover from ailments or medical procedures (see Abstract). As noted by the Office Action, Douglas discloses a rewards feature, where users earn points by good participation in the program and by reaching certain milestones (Douglas 14:42-44). For instance, points may be earned for good attendance at meetings, good participation during the meetings, chairing a meeting, or losing a certain amount of weight, if this was a goal to be accomplished (Douglas 14:44-47). The reward points can be cashed in at the village store 78 for purchase of various items such as goods, frequent flier miles, or a symbolic reward (Douglas 19:1-2; claim 23).

Hence, while Douglas indeed discloses reward points tracked on a per user basis, reward points, like any other form of currency, do not give any indication of user sophistication. In other words, you cannot determine the user's sophistication based on how many reward points the user has. By way of example, assume two users: (1) an overweight doctor; and (2) an overweight truck driver. Clearly the doctor is a more sophisticated user than the truck driver, as the doctor is able to understand detailed medical articles and research which the truck driver could not. If both the doctor and the truck driver have goals of losing 10 pounds, and they both achieve those goals, Douglas would reward them both by awarding them "reward points", say 10 reward points. Now we have two users both with 10 reward points, but we have no basis for distinguishing the doctor from the truck driver *on the basis of the reward points* as alleged by the Office Action. Thus, Douglas fails to disclose or suggest determining a user sophistication based on a user inquiry as claimed.

Moreover, the reward points in Douglas are not used to condition search results from the village library 80. Rather, the reward points in Douglas are cashed in at the village store 78 for purchase of various items such as goods, frequent flier miles, or a symbolic reward (Douglas 19:1-2; claim 23). Hence Douglas fails to disclose or suggest conditioning search results based on the user sophistication as claimed.

As Douglas fails to disclose or suggest determining a user sophistication and conditioning the search results based on the user sophistication, it cannot anticipate the presently claimed invention. Withdrawal of the rejections under 35 U.S.C. §102(e) is solicited.

### **Rejection Under 35 U.S.C. §103(a)**

Claim 51 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Douglas in view of Official Notice. Applicant respectfully traverses this rejection for at least the following reasons.

The Office Action acknowledges that Douglas does not ask the user to undergo surgery. The Examiner takes Official Notice, however, that the concept of having a physician ask a patient to undergo surgery is very well known in the context of physician - patient interaction. Without acquiescing to the Examiner's assertion, Applicant respectfully directs the Examiner's attention to claim 51, which recites "transmitting telemedicine signals over a network to perform remote surgery." Hence, claim 51 does not ask a patient to undergo surgery as recited in the Office Action - claim 51 positively recites actually performing the surgery. As the Examiner's Official Notice fails to suggest it is known to remotely perform the surgery, claim 51 is believed to recite allowable subject matter. Withdrawal of the rejection under 35 U.S.C. §103(a) is solicited.

### CONCLUSION

In view of the above amendment and remarks, Applicant respectfully requests that all objections and rejections be withdrawn and that a notice of allowance be forthcoming. The Examiner is invited to contact the undersigned for any reason related to the advancement of this case.

Respectfully submitted,

Date: May 10, 2004

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